

1 California Rules of Court, rule 39.5 is amended, and rules 39.50, 39.51,  
2 39.52, 39.53, 39.54, 39.55, 39.56, and 39.57 are adopted, effective March 1, 1997,  
3 to read:

4  
5 **Rule 39.50. Appeals in death penalty cases**

6 (a) [General] The rules governing appeals from the superior court in other  
7 criminal cases apply to appeals from judgments rendering the penalty of death  
8 except where otherwise provided by ~~this~~ these rules, 39.50 through 39.57.

9 (b) [Interpretation] These rules 39.50 through 39.57 shall be interpreted  
10 to effectuate the intent of the Legislature, as stated in Penal Code section 190.8,  
11 subdivision (a), that the record in death penalty appeals be expeditiously certified.

12 (c) [Extensions of time in the trial court] Wherever these rules allow the  
13 trial court to grant an extension of the time limits specified in these rules, the court  
14 may consider the policies and factors contained in rule 45.5, to the extent they are  
15 applicable.

16 ~~(b)~~ (d) [Notification by clerk] The clerk of the superior court shall,  
17 forthwith upon its rendition, mail certified copies of the judgment imposing the  
18 penalty of death to the Clerk of the Supreme Court and to the Attorney General.

19  
20 **Rule 39.51. Record in death penalty cases**

21 ~~(e)~~ (a) [Contents of record] When a judgment of death has been rendered,  
22 the entire record, consisting of a clerk's transcript and a reporter's transcript, shall  
23 be prepared. ~~The entire record includes (1) the normal record specified in~~  
24 ~~subdivision (a) of rule 33; (2) all items which could be requested for inclusion in~~  
25 ~~the record pursuant to subdivision (b) of rule 33; (3) any other paper or record~~  
26 ~~filed or lodged with the superior court pertaining to the case including, but not~~  
27 ~~limited to, transcripts of proceedings in the municipal or justice court; and (4) a~~

1 ~~transcript of any other proceeding reported in the superior court pertaining to the~~  
2 ~~trial of the case.~~

3 (1) (*Clerk's transcript*) The clerk's transcript shall include all documents  
4 filed or lodged in the municipal and superior court files in the case, including all  
5 items listed in rule 33(a) and juror questionnaires of all potential jurors, regardless  
6 of whether the jurors were selected to sit on the case.

7 (2) (*Reporter's transcript*) The reporter's transcript shall include  
8 transcripts of all oral proceedings in the municipal and superior courts in the case,  
9 including transcripts of prior proceedings in the same case that did not result in a  
10 verdict or the death penalty because of a mistrial or an order granting a new trial.

11 (b) [Confidential transcripts] All documents filed confidentially under  
12 Penal Code section 987.9 or 987.3 shall be sealed and copies provided only to the  
13 reviewing court and to counsel for the defendant to whom the documents relate.  
14 All transcripts of in camera proceedings shall be sealed and copies provided only  
15 to the reviewing court and to counsel for those parties present at the proceedings.

16 (c) [Additional material] This subdivision rule does not affect the power  
17 of the Supreme Court or superior court to order inclusion of additional matter.

18  
19 **Rule 39.52. Preparation and certification of transcripts of municipal court**  
20 **proceedings in death penalty cases**

21 (a) [Application] The transcripts of oral proceedings in the municipal  
22 court in a capital case shall be prepared and certified in accordance with Penal  
23 Code section 190.9(a) and the following procedures.

24 (b) [Notice to municipal court to prepare record] Upon receiving  
25 notification from the prosecution that the death penalty is being sought, the  
26 responsible superior court judge shall enter that information on the record and  
27 shall notify the presiding judge and clerk of the municipal court.

1       (1) The responsible superior court judge is the judge assigned to try the  
2 case or, if none has been assigned, the presiding judge or a designee of the  
3 presiding judge.

4       (2) Notification from the prosecution to the superior court shall be deemed  
5 to have been given, for the purposes of this rule only, 60 days before the first date  
6 set for trial on a charge of murder with special circumstances unless the  
7 prosecution has previously given notice that it does not intend to seek the death  
8 penalty.

9       (c) [Assignment of judge] Upon receiving notification from the  
10 responsible superior court judge that the death penalty is being sought, the  
11 presiding judge of the municipal court shall assign to a judge responsibility for  
12 preparation of the municipal court record in that case.

13       (d) [Notice to prepare transcripts; designation of primary reporter]  
14 Upon receiving notice that the death penalty is being sought, the municipal court  
15 clerk shall promptly, and in any event within five days of receiving notice, notify  
16 each and every court reporter who has reported any hearing, conference, or  
17 proceeding in the municipal court, whether in chambers or in open court, in the  
18 case. If there has been more than one reporter, the responsible municipal court  
19 judge may assign one reporter or other designee to perform the functions of the  
20 primary reporter as specified in rule 9(f).

21       (e) [Preparation and number of copies] Each reporter shall prepare  
22 an original transcript and five paper copies of the proceedings in the manner and  
23 form required by rule 9, and two additional copies for each co-defendant against  
24 whom the prosecution is seeking the death penalty. A certificate attesting that the  
25 transcript is correct shall be attached to each original and each paper copy.

26       This subdivision requires preparation of the transcript of the preliminary  
27 hearing unless that transcript has already been filed with the superior court for the  
28 purpose of including it in the superior court clerk's transcript.

1        **(f) [Delivery of reporter's transcript]** The primary reporter or other  
2        designee, if one has been designated pursuant to subdivision (d), shall deliver the  
3        original and all copies to the municipal court clerk promptly upon their  
4        completion, and in no event more than 20 days after notice by the clerk to prepare  
5        the reporter's transcript. Upon receipt of the reporter's transcripts, the clerk shall  
6        promptly, and in any event within five days, deliver the original of the reporter's  
7        transcript to the designated municipal court judge responsible for preparation of  
8        the record in the case, one copy to each defendant or, if the defendant is  
9        represented by counsel, to his or her trial attorney, and one copy to the prosecuting  
10       attorney. Confidential transcripts shall be sealed and copies provided only to  
11       counsel for those parties who were present at the confidential proceeding.

12       **(g) [Review by counsel]** To determine whether a request for corrections or  
13       for additional transcripts or documents should be filed, counsel shall

14       (1) review the docket sheets to ensure that transcripts of all proceedings  
15       have been made;

16       (2) examine the municipal court file to determine whether it is complete;

17       (3) review the reporter's transcript; and

18       (4) consult with opposing counsel to determine whether all other  
19       discussions have been properly transcribed.

20       **(h) [Declaration and request for corrections and additional transcripts]**  
21       No later than 30 days after delivery of the transcripts, counsel for the prosecution  
22       and for the defense shall each file with the municipal court one of the following:

23       (1) A declaration stating that he or she has performed the tasks required by  
24       this subdivision or that they have been performed under counsel's supervision, and  
25       any request for corrections of or additions to the reporter's transcript or the  
26       municipal court file, or

27       (2) A request for extension of time to file the declaration and request.

1        (i) [Certification] If no request for corrections or additions is filed, the  
2 designated municipal court judge shall certify the record of the municipal court  
3 proceedings as complete and correct. If one or more requests for corrections or  
4 additions are filed, the following procedures shall be followed:

5        (1) The designated municipal court judge shall hold a hearing within 15  
6 days of the filing of the request and shall make a determination on all requests.

7        (2) The original reporter's transcript shall be corrected to reflect all  
8 corrections ordered. All corrections shall be furnished to the parties in the form of  
9 copies of corrected transcript pages.

10       (3) The corrected and additional transcripts and documents shall be  
11 delivered to the designated municipal court judge no later than 20 days after the  
12 hearing.

13       (4) The court may order further proceedings for correcting or completing  
14 the record as needed.

15       (5) When the court's order has been satisfied, the judge shall certify that all  
16 objections have been determined and that the transcripts have been corrected in  
17 accordance with such determination.

18       (6) The reporter shall provide four computer-readable copies of the  
19 transcript, conforming to the requirements of Code of Civil Procedure section  
20 269(c) and rule 35(b), and an additional computer-readable copy for each co-  
21 defendant against whom the prosecution is seeking the death penalty, each labeled  
22 to show the date on which the computer-readable copy was made.

23       (j) [Delivery to superior court] No later than five days after the  
24 municipal court record has been certified, the municipal court clerk shall deliver to  
25 the superior court clerk for inclusion in the superior court record (1) the corrected  
26 and certified original municipal court reporter's transcripts and those copies that  
27 have not been distributed to counsel, including the computer-readable copies, and  
28 (2) the municipal court file or a certified copy of the municipal court file.

1        **(k) [Notice that death penalty is no longer being sought]** If at any time  
2        the death penalty is no longer sought or available in a case in which the superior  
3        court has notified the municipal court to begin preparing the certified record, the  
4        superior court clerk shall promptly notify the municipal court clerk and reporters  
5        that the requirements under this rule no longer apply.

6        **(l) [Extension of time]** The municipal court may extend any of the time  
7        periods specified by this rule for good cause only, but may not extend the 120-day  
8        period specified in Penal Code section 190.9(a)(2) for delivery of the municipal  
9        court record to the superior court.

10       **(1)** The municipal court may request an extension of the 120-day period for  
11       delivery of the municipal court record by presenting to the responsible superior  
12       court judge a declaration containing a specific statement of reasons the time limits  
13       cannot be met.

14       **(2)** The superior court shall not extend the time for more than an aggregate  
15       of 90 days except in an exceptional case. If the superior court extends the time for  
16       more than 90 days, it shall state on the record its specific reasons for doing so.

17  
18       **(d) Rule 39.53. [Preparation of the record] in death penalty cases**

19       **(a) [Cases commenced prior to January 1, 1997]** In cases in which the  
20       trial commenced prior to January 1, 1997, the time limits for preparation and  
21       certification of the record are those specified in rule 35, except that under  
22       subdivision (c) of that rule, the time within which to request correction of the  
23       record is 20 days from the delivery of the transcripts to the parties or their counsel  
24       and the time within which the clerk shall deliver the transcripts to the judge after a  
25       request for correction is 50 days from the rendition of judgment, unless either time  
26       is extended as provided in subdivision (d) of that rule. For purposes of computing  
27       time for preparation of the record, the notice of appeal shall be deemed to have  
28       been filed at the time of rendition of the judgment.

1       **(b) [Cases commenced on or after January 1, 1997]** In cases in which  
2       the trial commenced on or after January 1, 1997, the record shall be prepared in  
3       accordance with Penal Code section 190.8 and the following procedures:

4       **(1) (Preparation of clerk's transcript)** Upon the entry of a judgment of  
5       death, the superior court clerk shall prepare an original and six copies of the  
6       clerk's transcript, in the manner and form required by rule 9. The clerk's  
7       transcript shall include the contents of the municipal court file. The clerk shall  
8       append to the original and each copy a certificate that it is correct. When more  
9       than one co-defendant is sentenced to death, the clerk shall prepare two copies for  
10      each additional co-defendant sentenced to death.

11      **(2) (Notice to prepare reporter's transcript)** The clerk, promptly upon the  
12      entry of a judgment of death, and in any event within five days after entry of the  
13      judgment, shall notify the reporter. The notice shall be delivered to the reporter  
14      personally or to his or her office or internal mail receptacle; if the reporter is not  
15      employed by the court, the notice may be mailed.

16      **(3) (Preparation and number of copies)** The reporter shall prepare  
17      an original and five clearly legible copies of the reporter's transcript and two  
18      additional copies for each additional co-defendant sentenced to death, in the  
19      manner and form required by rule 9. A certificate that the document is correct  
20      shall be attached to the original and to each copy. Portions of the transcript that  
21      were prepared during the trial shall not be retyped unless necessary to correct  
22      errors. These portions shall be renumbered and bound together with transcripts of  
23      any portions of the proceedings not previously transcribed. If additional copies are  
24      needed, they shall be prepared by photocopying or an equivalent process and not  
25      by retyping.

26      **(4) (Delivery)** The primary reporter shall deliver the original and all copies  
27      to the clerk. The clerk shall deliver one paper copy of the clerk's transcript and  
28      the reporter's transcript each to the prosecuting attorney and to the attorney who

1 represented the defendant at the trial, no later than the 30-day deadline mandated  
2 by Penal Code section 190.8(b). The clerk shall retain the original transcript and  
3 the remaining copies.

4 **(5) (Extension of time for preparation of the clerk's or reporter's**  
5 **transcript)** The superior court may grant an extension of the 30-day deadline for  
6 preparation of the transcripts mandated by Penal Code section 190.8(b) upon  
7 request of the clerk or a reporter for good cause only, for up to 30 additional days  
8 only. Any further extension of time may be granted only by the Supreme Court.

9 **(6) (Request for extension of time)** The clerk or reporter shall request an  
10 extension by presenting to the superior court or the Supreme Court a declaration  
11 containing a specific statement of reasons the time limits cannot be met. Good  
12 cause may be presumed in cases in which the clerk's and reporter's transcripts  
13 combined exceed 10,000 pages.

14 **(7) (Order extending time)** If the superior court grants an extension of  
15 time for preparation of the record, it shall state in a written order the specific  
16 reasons that justify the extension. A copy of the order shall be promptly delivered  
17 to the Supreme Court.

18  
19 **Rule 39.54. Certification of record for completeness in death penalty cases**

20 **(a) [General]** In death penalty cases in which the trial commenced after  
21 January 1, 1997, the trial court shall certify the record for completeness in  
22 accordance with Penal Code section 190.8 and this rule.

23 **(b) [Review of record by trial attorneys]** Both the defense attorney and  
24 the prosecuting attorney shall review the docket sheets and minute orders to  
25 determine whether the reporter's transcript is complete, and shall review the  
26 superior court file to determine whether the clerk's transcript is complete.

1        **(c) [Declaration and request for additions or corrections]** No later than  
2        30 days after delivery of the transcripts to counsel, the prosecuting attorney and  
3        the defense attorney shall each file with the superior court one of the following:

4            (1) A declaration stating that he or she has performed the tasks required by  
5        this rule or that they have been performed under counsel's supervision, any request  
6        for additional materials to be included in the record, and any request for  
7        corrections of errors that have come to the attorney's attention, or

8            (2) A request for extension of time to file the declaration and requests,  
9        pursuant to subdivision (f).

10        A request for additional reporter's transcripts shall state the nature and date  
11        of the proceedings and the name of the reporter who transcribed them.

12        **(d) [Hearings on completion of record]** If a request for additional  
13        materials or for corrections is filed, the clerk shall deliver the original transcript to  
14        the judge who presided over the trial. A determination on the request shall be  
15        made as follows:

16            (1) No later than 15 days after the filing of the declaration and any request  
17        described in subdivision (c), the trial court shall conduct a hearing pursuant to  
18        Penal Code section 190.8(e) to address the completeness and accuracy of the  
19        record. The trial court shall determine whether the requested corrections shall be  
20        made.

21            (2) The trial court shall order any additional transcripts or corrections to be  
22        prepared within 10 days of the date of the order. The clerk shall promptly, and in  
23        any event in no less than five days, notify the reporter of the court's order. If a  
24        transcript of any part of the oral proceedings cannot be obtained, the court may  
25        make an order permitting the preparation of a settled statement in accordance with  
26        rule 36.

1       (3) The corrections ordered shall be furnished to the parties in the form of  
2 copies of corrected transcript pages. The original transcripts shall be corrected to  
3 reflect all corrections ordered.

4       (4) The trial court shall set another hearing within five days after the date  
5 on which the additional or corrected transcripts are filed. At that hearing, the court  
6 shall determine whether the record has been completed in accordance with its  
7 previous order and shall order further proceedings for correction or completion of  
8 the record as needed.

9       (e) [Certification] If no request for corrections or for additional  
10 transcripts is made, or when the record has been completed and corrected in  
11 accordance with the court's order, the court shall certify the record as complete  
12 and shall redeliver the transcripts to the clerk. The record shall be certified as  
13 complete within 90 days of the imposition of the death sentence, as required by  
14 Penal Code section 190.8(d).

15       (f) [Preparation of computer-readable copies] Upon certification of the  
16 record as complete, the clerk shall promptly notify the reporter to prepare three  
17 computer-readable copies of the transcript, plus an additional computer-readable  
18 copy for each additional co-defendant who has been sentenced to death. The  
19 computer-readable copies shall conform to the requirements of Code of Civil  
20 Procedure section 269(c) and rule 35(b) and shall be labeled to show the date on  
21 which they were made. The computer-readable copies shall contain the identical  
22 volume divisions, pagination, line numbering, and text of the original paper  
23 transcript as corrected and certified as complete. Each transcript of a confidential  
24 proceeding shall be placed on a separate disk and clearly labeled as confidential.  
25 The reporter shall deliver the computer-readable copies of the transcript no later  
26 than 10 days after the date the clerk gives notice of certification.

27       (g) [Extension of time] The trial court may extend the time for review of  
28 the record and filing the documents required by subdivisions (b) and (c), or any of

1 the time periods specified in subdivision (d), (e), or (f) for good cause. In cases in  
2 which the clerk's and reporter's transcripts combined contain more than 10,000  
3 pages, the court may grant an additional three days for every 1,000 pages of  
4 combined transcript for counsel to review the records as required by subdivisions  
5 (b) and (c).

6 **(h) [Request for extension of time]** Any request for extension of time for  
7 review of the record shall be filed in writing before the expiration of the 30-day  
8 deadline.

9 **(i) [Order granting extension of time]** If the court grants any extension of  
10 time or extends the time for certification of the record on its own motion, the court  
11 shall state the specific reasons that justify the extension in a written order. A copy  
12 of the order shall be promptly transmitted to the Supreme Court.

13 **(j) [Delivery]** When the record has been certified as complete, the clerk  
14 shall deliver one copy to each appealing defendant's appellate attorney, one copy  
15 to the Attorney General, and one copy to the California Appellate Project in San  
16 Francisco, and note the dates of the deliveries. The copy of the reporter's  
17 transcript for the California Appellate Project shall be a computer-readable copy of  
18 the reporter's transcript rather than a paper copy. A computer-readable copy of  
19 the reporter's transcript shall also be delivered to each defendant's appellate  
20 attorney and to the Attorney General. If counsel has not been retained or  
21 appointed for a defendant, the clerk shall retain appellate counsel's copies of the  
22 record until counsel has been retained or appointed.

23 **(k) [Notice of delivery]** When the record is delivered to defendant's  
24 appellate counsel, the clerk of the superior court shall serve notice of delivery  
25 upon the Clerk of the Supreme Court.

1 **Rule 39.55. Certification of record for accuracy in death penalty cases**

2 **(a) [General]** In death penalty cases in which the trial was commenced on  
3 or after January 1, 1997, the record shall be certified for accuracy in accordance  
4 with Penal Code section 190.8(g) and this rule.

5 **(b) [Request for corrections and additions by appellate counsel]**  
6 Appellate counsel shall file any request for corrections or additional transcripts no  
7 later than 90 days after the delivery of the record on appeal to the defendant's  
8 appellate counsel. Any request for additional reporter's transcripts shall state the  
9 nature and date of the proceedings and the name of the reporter.

10 **(c) [Hearing on request]** If a request is filed, the clerk shall deliver the  
11 original transcript to the trial judge. No later than 15 days after the filing of any  
12 request described in subdivision (b), the trial court shall conduct a hearing  
13 pursuant to Penal Code section 190.8(e) to address the completeness and accuracy  
14 of the record, in accordance with the procedures and timelines set out in rule  
15 39.54(d).

16 **(d) [Certification]** If no request for corrections or for additional  
17 transcripts is made, or when the record has been completed and corrected in  
18 accordance with the court's order, the court shall certify the record as accurate and  
19 shall redeliver the record to the clerk. The record shall be certified as accurate  
20 within 120 days after it has been delivered to appellate counsel, as required by  
21 Penal Code section 190.8(g).

22 **(e) [Preparation of computer-readable copies]** Upon certification of the  
23 record as accurate, the clerk shall promptly notify the reporter to prepare four  
24 corrected computer-readable copies of the transcript, plus an additional computer-  
25 readable copy for each additional co-defendant who has been sentenced to death.  
26 The computer-readable copies shall conform to the requirements of Code of Civil  
27 Procedure section 269(c) and rule 35(b) and shall be labeled to show the date on  
28 which they were made. The computer-readable copies shall contain the identical

1 volume divisions, pagination, line numbering, and text of the original paper  
2 transcript as corrected and certified as accurate. Each transcript of a confidential  
3 proceeding shall be placed on a separate disk and clearly labeled as confidential.  
4 The reporter shall deliver the computer-readable copies of the transcript no less  
5 than 10 days after the date the clerk gives notice of certification.

6 **(f) [Extension of time]** The trial court may extend the time for filing a  
7 request for corrections or additions under subdivision (b) and any of the time  
8 periods specified in subdivisions (c), (d), or (e) for good cause.

9 **(g) [Request for extension of time to request corrections]** Any request  
10 for extension of time to request correction of the record or additional records must  
11 be filed in writing before the expiration of the 90-day deadline. In cases in which  
12 the clerk's and reporter's transcripts combined contain more than 10,000 pages,  
13 the court may grant an additional 15 days for every 1,000 pages of combined  
14 transcript over 10,000 pages for counsel to file a request for corrections or  
15 additional transcripts.

16 **(h) [Order extending time]** If the court grants any extension of time or  
17 extends the time for certification of the record on its own motion, the court shall  
18 state the specific reasons that justify the extension in a written order. A copy of  
19 the order shall be promptly transmitted to the Supreme Court. In any case in  
20 which the trial court has granted an extension of time, it may conduct a status  
21 conference or require a written status report 90 days after the delivery of the  
22 record to defendant's appellate attorney, or at some other reasonable time, so that  
23 the attorney may report on the progress made in reviewing the record.

24  
25 **Rule 39.56. Transmission of record in death penalty cases**

26 When the record has been certified as accurate in accordance with rule  
27 39.55(d), the clerk shall transmit the record as follows:

1       (1) To the Clerk of the Supreme Court, the original record and one  
2       computer-readable copy of the reporter's transcript;

3       (2) To the Attorney General and all parties, (i) a notice enumerating all  
4       corrections ordered and stating a date of certification, (ii) copies of any corrected  
5       pages of the corrected transcripts, and (iii) a corrected computer-readable copy of  
6       the reporter's transcript;

7       (3) To the California Appellate Project, a corrected computer-readable  
8       copy of the reporter's transcript; and

9       (4) To the Governor, the copies of the record required by Penal Code  
10       section 1218, with copies of pages containing corrections inserted, and with a copy  
11       of the notice of corrections.

12  
13       **Rule 39.57. Time for filing briefs in death penalty cases**

14       (a) [Application] This rule applies to cases in which a sentence of death  
15       was imposed on or after January 1, 1997.

16       (b) [Appellant's opening brief] Once the record is certified for  
17       completeness or the clerk delivers the completed record to appellate counsel,  
18       whichever is later, the Clerk of the Supreme Court shall notify appellant's counsel  
19       and the Attorney General of the due date for the appellant's opening brief. If the  
20       clerk's and reporter's transcripts combined contain 10,000 pages or fewer,  
21       appellant's opening brief shall be filed no later than 210 days after the certification  
22       of the record for completeness or after appellant's counsel receives a copy of the  
23       completed record, whichever is later, as mandated by Penal Code section 190.6(b).  
24       If the clerk's and reporter's transcripts combined contain more than 10,000 pages,  
25       the time for filing appellant's opening brief shall be automatically extended by 15  
26       days for each 1,000 pages of combined transcript over 10,000 pages.

27       (c) [Respondent's brief] Upon the filing of the appellant's opening brief,  
28       the Clerk of the Supreme Court shall notify the Attorney General of the due date

1 for respondent's brief. If the clerk's and reporter's transcripts combined contain  
2 10,000 pages or fewer, respondent's brief shall be filed no later than 120 days  
3 after the date that appellant's opening brief was filed. If the clerk's and reporter's  
4 transcripts combined contain more than 10,000 pages, the time for filing  
5 respondent's brief shall be automatically extended by 15 days for each 1,000 pages  
6 of combined transcript over 10,000 pages.

7 **(d) [Appellant's reply brief]** Appellant may file a reply brief no later than  
8 60 days after the date that respondent's brief was filed.

9 **(e) [Extension of time]** Extension of time to file a brief may be granted by  
10 the Supreme Court for good cause, in accordance with the policies and factors  
11 contained in rule 45.5, to the extent they are applicable.